IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.10438 of 2006
Date of decision:27.11.2006

M/s. Condor Power Products Private Limited

....Petitioner

versus

The State of Haryana and others

....Respondent

CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL
HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. Avneesh Jhingan, Advocate, for the petitioner.
Ms. Ritu Bahri, DAG, Haryana.

JUDGMENT:

This writ petition seeks quashing of order dated 11.11.1998, Annexure P-1/A, passed by the Lower Level Screening Committee (LLSC) under the provisions of the Haryana General Sales Tax Rules, 1975 (for short, 'the Rules') and order dated 3.5.2006, Annexure P.8 passed by the Higher Level Screening Committee (HLSC) under the said Rules.

Case of the petitioner is that it is a private Limited Company and is a dealer registered under the provisions of the Haryana General sales Tax Act, 1973 (for short, 'the Act') and the Central Sales Tax Act, 1956 (for short, 'the Central Act'). It started its commercial production on 21.1.1997. It applied for availing benefit of Sales Tax Deferment Scheme under Section 25-A of the Act read with Rule 28-A of the Rules. Benefit is provided under Rule 28-A(4) (a) of the Rules with percentage of fixed capital investment depending upon the zone wherein the unit is located and depending upon the purpose for which benefit is sought i.e. whether it is sought for new unit or for unit undertaking expansion/diversification. The petitioner was granted eligibility certificate for availing exemption for an amount of Rs.36.62 lacs as against claim of Rs. 75.66 lacs. At the option of the petitioner, the said benefit was converted into interest free loan.

From a perusal of the minutes of the meeting of the LLSC,

whereby the claim of the petitioner was reduced from Rs. 75.66 lacs to Rs. 36.62 lacs, the observations were that the land under use of the company is measuring 1669.26 square yards and as per the price fixed by the Sub Registrar during the year 1996-97, if the value thereof is assessed at the rate of Rs. 700/- per square yard, the same comes out to Rs. 11,68,482/- as against the purchase of land by the petitioner along with an old shed thereon for a sum of Rs. 30,50,000/- by way of a registered sale deed. With these discussions, the claim on account of investment in land was restricted to Rs. 24,00,000/- with over-all limit of amount of Rs. 36,62,000/-.

The petitioner preferred an appeal under Rule 28-A(5)(f) of the Rules with a grievance that though, exemption was claimed to the extent of Rs.75.66 lacs, the same was wrongly limited to Rs.36.62 lacs. The appeal was finally disposed of vide order dated 3.5.2006, Annexure P.8. The operative part of the said order is as under:-

> "....The LLSC granted the benefit on land on the collector rates and disallowed the claim on building as the unit has purchased the old building. After due deliberation the committee decided to uphold the decision of LLSC as the LLSC has allowed the benefit on the investment on land and building keeping in view the requirement of the unit. The committee is competent to disallow the benefit on the excess land and building purchased by the unit. Keeping in view the above position the committee decided to dismiss the appeal of the unit."

Grievance of the petitioner is that the value of plant and machinery was not properly assesseed in the light of evidence produced. It has not been discussed by the LLSC or by the HLSC.

In reply filed by the respondents, it is pleaded that after verification on a visit to the site, the DETC recommended for grant of benefit to the petitioner only to the extent of Rs.8,11,314/- vide his report at Annexure R.1. However, on a consideration of the report by the DETC and the General Manager, District Industries Centre, the LLSC permitted the benefit to the petitioner to the extent of Rs.36.62 lacs. The unit in question commenced commercial production on January 21, 1997. The benefit as per Rule 28A(2)(g) of the Rules, which defines fixed capital investment, could

be claimed on land under use, new construction, new plant and machinery etc. As the sale consideration paid by the petitioner for purchase of land was inclusive of pre-existing shed and building thereon, the entire claim of Rs.52 lacs could not be accepted. The LLSC ascertained the land under use at 1669.26 square yards. It was further pointed out that even on account of investment in plant and machinery, certain norms were required to be followed for the reason that either those were not forming part of plant and machinery or the payments thereof had not been made within the permissible period.

Learned counsel for the petitioner submitted that the issue in the suit relates to demand alleging excess availment of deferment without following the due procedure and quantum of the entitlement of the petitioner is not the issue therein. It is further pointed out that in the order, Annexure P.8, contentions raised by the petitioner in the grounds of appeal, Annexure P.5 have not been gone into.

We have considered the rival submissions and perused the impugned orders.

From a perusal of the finding recorded by the LLSC, HLSC in appeal and also in the written statement filed by the Department of Excise and Taxation, it is clear that different stands have been taken at different places. Mr. Avneesh Jhingan, learned counsel for the petitioner contended that the issues which are sought to be referred to and relied upon by the respondents in the written statement, such as the report of the DETC and also the disallowance on account of investment in plant and machinery was not even confronted to the petitioner during the earlier proceedings.

We find substance in the plea raised by learned counsel for the petitioner. It cannot be disputed that the material, which is sought to be relied upon against a person in any quasi judicial proceedings determining the rights of the person concerned, he has to be informed of the reasons for rejection or curtailment of his claim and in the present case, the same has not been followed. The assessee could not get opportunity to controvert the reasons on which his entitlement was curtailed so as to enable him to satisfy the authorities concerned about the genuineness of the claim made by him. In the facts and circumstances of the case, we are of the view that the impugned order has to be set aside and matter remanded for fresh decision

to the appellate authority i.e. HLSC.

Accordingly, we allow this petition and direct the appellate authority to pass a fresh order after hearing the petitioner in accordance with law within 3 months of the receipt of a copy of this order.

It is made clear that we have not expressed any opinion on merits of the controversy raised in the petition.

(Adarsh Kumar Goel)
Judge

November 27, 2006 (Rajesh Bindal)
'gs'/mk Judge